IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10122 of 1994

WITH

SPECIAL CIVIL APPLICATIONS NO.10123 TO 10126 OF 1994

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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USMANKHAN YASINKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

In all five petitions.

MR IS SUPEHIA for Petitioner.
MR SP HASURKAR for RespondentS No. 1 to 3.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 01/08/2001

COMMON ORAL JUDGEMENT

In all these petitions common question as to whether "khangi servants" of earstwhile ruler of Devgadh Baria State are entitled for pensionary benefits or not. Therefore, all these petitions are disposed of by this common judgment.

2. Usmankhan Yasinkhan Pathan - petitioner of Special Civil Application NO. 10123/94 was appointed as a tailor on 1-1-1933 by the former Ruler of Devgadh Baria State and he was relieved on 10-6-1948 on merger of the said former Ruler of Devgadh Baria State. Shania Nathubhai Baria - petitioner of Special Civil Application No. 10122 of 1994 was appointed as Dresser of former Ruler of Devgadh Baria State on 24-1-1931 and he was relieved on 10-4-1948 on the merger of the former Ruler of Devgadh Baria State. Yaminkhan Nazirkhan Pathan petitioner of Special Civil Application No. 10124 of 1994 was appointed as a Tailor on 1-1-1916 on the establishment of the former Ruler of Devgadh Baria State and on merger of the said State, he was retired from the service on 10-6-1948 and he died on 30-4-1984. Gumansingh Mokaji Jadeja was appointed as a Dresser on the establishment of the former Ruler of Devgadh Baria State and on merger of that State, he was retired from service from 10-6-1948 and he died on 1-9-1970. Bhikhabhai Amichand Valand - petitioner of Special Civil Application No. 10126 of 1994 joined as the service of the former Ruler of Devgadh Baria State as a Barber on 1-1-1937 and continuously worked upto 10-6-1948 when the said State was merged and died on 13-1-1979.

2. It is stated that after merger of Devgadh Baria State "khangi" servants who were paid from the State Treasury by the former Ruler of Devgadh Baria State made representations for grant of pension and some of "Khangi" servants were granted pension. The Collector, Panchamahals District, called upon some of the petitioners to furnish certain information and accordingly required informations were furnished. Thereafter, the petitioners made further representation to the Collector of Panchamahals District, Godhara. The concerned Mamlatdar asked the petitioners to remain present with necessary original documents. The concerned Mamlatdar informed the petitioners that nothing could be done as the family pension has been given to the widows only. The petitioners are entitled to the pensions in view of the letter dated 7-5-1955 written by the Collector, Panchamahals District, to the under Secretary to the Government of Bombay pointing out that "khangi servants" of former Devgadh Baria State are entitled to the pension. It is also stated that some similarly

situated persons have been sanctioned pension and the action of the respondent authority is arbitrary, illegal, unjust and discriminatory and violative of Article 14 of the Constitution of India.

3. An affidavit-in-reply on behalf of the Collector, Panchamahals District, has been filed. It is stated in the said affidavit-in-reply that the petitioners were serving with the former Ruler of Devgadh Baria State and their salary were paid by the former Ruler of Devgadh Baria State. The petitioners were relieved from service on different dates and as per the letter dated 19-7-1954, the former Ruler of Devgadh Baria had about 438 private employees. Out of the aforesaid private employees, 411 employees were relieved by him after payment of three month's notice pay and out of the remaining 27 employees, on production of necessary documents, 5 of them were paid pensionary benefits and rest of 22 employees could not prove that their salary were used to be paid out of the state treasury and hence they were not granted pensionary benefits to the petition/petitioners. The Collector, Panchamahals District, Palanpur also vide letter dated 7-5-1955 sent a proposal to the Political and Service Department of the erstwhile State of Bombay and the same was rejected by the department vide its letter dated 25-6-1955 and it had recommended termination from service after giving three months' notice pay. Thereafter, the petitioners moved various representations and they were rejected by the letter dated 14-6-1954 of the Political and Service Department of erstwhile State of Bombay. Various representations were made and information regarding rejection was sent by letter dated 25-6-1955, Political and Service Department of erstwhile State of Bombay, letter dated 18-7-1951 of General Administrative, Gujarat State, letter dated 20-5-1961 of Gujarat Administrative Department, State of Gujarat, in response to the letter written by Shri Shantibhai C. Patel, M.L.A. All the aforesaid representations made to the former State of Devgadh Baria as well as to the State of Gujarat, were rejected by the State Government as well as the erstwhile State of Devgadh Baria. Even after lapse of 45 years after merger of Devgadh Baria State the petitioners are agitating the same point again and again though the petitioners have no existing legal right and corresponding duty on the part of the State to extend them pensionary benefits. Hence, the present petitions deserve to be dismissed.

4. In these petitions, the petitioner or the father of the petitioners were servant of the former Ruler of Devgadh Baria State as the case may and on merger of that

State they were relieved on 16-6-1948. The resolution dated 13-5-1951 of the Political and Service Department of the erstwhile State of Bombay rejected the applications of the petitioner or petitioner's father as the case may be on the ground that private employees of the former Ruler of Devgadh Baria State were not entitled to the pensionary benefits. The State of Gujarat has also rejected the application vide letter dated 18-7-1961. Once again, the State of Gujarat, has replied to the Collector, Panchamahals District vide his letter dated 20-5-1969 stating therein that the petitioners were not entitled to the pensionary benefits. The petitioner again made the application and in response thereof the concerned department was informed to submit the papers to the Director of Pension and Provident, Ahmedabad. Accordingly, the Mamlatdar, Baria, sent the papers to the Director of Pension and Provident Fund, Ahmedabad vide letter dated 17-7-1993 and the office of the Director of Pension and Provident Fund informed the petitioner vide letter dated 24-11-1993 that the case of the petitioner/s is not covered under the GR No. 11-5-1990 of the Finance Department and hence they are not entitled to benefits of the said Government Resolution. Pursuant to that letter, the Mamlatdar has also replied to the petitioners accordingly. Those petitioners who received pensionary benefits were not the private employees of the former Ruler of Devgadh Baria State. Therefore, their salaries were paid out of the State Revenue. The State of Bombay had passed the necessary orders for giving pensionary benefits to those persons. The petitioners/petitioners' father as the case may be, were private servants of the former Ruler of Devgadh Baria State and hence they are not entitled to the pensionary benefits. The case of the petitioners was that the other persons who have been granted pensionary benefits are similarly situated is totally wrong and hence there is no breach of fundamental right of the petitioners under Article 14 and 16 of the Constitution of India.

5. The assertions that one of the petitioners namely Bhikhabhai has been granted pensionary benefits by the State of Gujarat is not correct and true.

6. Rejoinder affidavit has been filed by the petitioner of Spl. C.A. No. 10123/94 wherein it is stated that the questions involved in this petition is as to whether the petitioners who were "khangi" servants of the former Ruler of Devgadh Baria State, were paid from the State Treasury or from private purse of the said former Ruler of Devgadh Baria State. It is undisputed fact that the servants of the former Ruler of Devgadh

Baria State who were paid their salary from the State Treasury are being paid pension. It is stated that the petitioners were also being paid their salary from the State Revenue and stated that the petitioners were issued Service Books containing the service record of the employee. Combined pay bill was being prepared for all the employees of the former Ruler of Devgadh Baria State, this pay bill includes the name of the servants including those who were performing official as well as unofficial duty and that bill includes the name of some of the petitioners namely Rajkhard, Someswar Ramashankar, Dhula Dewa and they have been granted pension and Kalyansingh was granted pension vide letter dated 20-6-1961 and that was passed by the Accountant General of Gujarat. In the combined pay bill the petitioners' names have been shown as "khangi" servants of the former Ruler of Devgadh Baria State. The certificate dated 4-11-1961 issued by former Ruler of Devgadh Baria shows that some of the petitioners were the servants of the State Government and not private paid servants of that former State of Devgadh Baria and the petitioners were being paid from the state treasury and not private purse of former Ruler of Devgadh Baria State. Former ruler of Devagadh Baria State wrote a letter dated 10-4-1968 to the Collector of Panchamahals District to show that "khangi" servants of the former Ruler of Devgadh Baria State were entitled to the pensionary benefits. At the relevant time, there was no budgetary system and the former Maharaj of Devgadh Baria State was not allotted a particular sum from which he could pay to his personal staff. Former Maharaj of Devgadh Baria State could incur any expenses he liked without any check and he could get that sum from the treasury. Royal family enjoyed some privileges. No separate sum was allotted to him or his family through in no budgetary system, one cannot distinguish one department from the another and as the pay was drawn through treasury. Thus, the petitioners were being paid their salary from the State Treasury and not from private purse of the former Ruler of Devgadh Baria State.

7. The contention of the learned counsel for the petitioner is that the criteria fixed for giving pensionary benefits to "khangi" servants of the former Ruler of Devgadh Baria State is only that the salary of those servants was being paid out of the State Revenue (State Treasury), they were entitled to the pensionary benefits. On the same criteria, five persons have been granted pensionary benefits though they were also working as personal staff of the former Ruler of Devgadh Baria State and they were also paid by one and the same bill and their salaries were paid and drawn from the State

Treasury. As such, the petitioners are also entitled for the pensionary benefits. It is also stated the Collector of Banaskantha District sent a letter dated 7-5-1955 to the under Secretary to the Government of Bombay, Political and Service Department stating therein that all the "khangi" servants of the former Ruler of Devgadh Baria State were paid their salary from the general revenue of the State as other departments' servants were paid. In view of the above facts and circumstances of the case and position, all the "khangi" servants will be eligible to the notice pay in lieu of three months notice of discharge in addition to amount or gratuity, as the case may be vide Rule III and IV of G.R.P & S.D. No.2735/46 dated 30-5-1951. The Government Resolution of the Government of Bombay, Political and Service Department, dated 30-5-1951 says that the Rules and Instructions will apply to Non-Indian State Forces personnel and they are also applied to persons serving in the private departments of the Rulers, commonly known as 'khangi' servants provided that they were paid from the State Revenue. In such cases, audit need not insist on having a certificate from the authority concerned to the effect that the person concerned was paid from the State revenues. Then the authority concerned recommends a pension or gratuity audit should assume that it did so after verifying the source of payment.

8. In the letter dated 4-11-1961 written on behalf of former Maharaja of Devgadh Baria State it is certified that Shri Bhikha Amichand Valand of Devgad Baria was a servant of State Government and not a private paid servant of late His Highness the Maharaja of Baria and he was paid from the State Treasury office and not from the Private purse of late His Highness of Baria. Former of Maharaja of Devgadh Baria State also sent a letter dated 10-4-1968 to the Collector, Panchamahals District, Godhara and it was stated therein that the question of giving pension to the "khangi" department servants is still under the consideration of the Government but nothing has been done up to now and the question of nearly 411 servants is pending. The Collector of Panchamahals by his letter dated 7-5-1955 after deep investigation reported to the Government that the servants of the Baria State Khangi Department were paid from the Revenue of the Baria State and one and all servants be held eligible for pension or gratuity as the case may be. One of the bills has been produced wherein 57 persons have been paid their salary from the State Treasury. That will include the name of the petitioners and other persons who have been granted pensionary benefits. As such, the case of the petitioners is on the

identical footing and the petitioners are also entitled to the pensionary benefits.

9. On the contrary, learned A.G.P. contended that it is a question of fact as to whether the petitioners were being paid their salary from the State Revenue (State Treasury) or from the personal purse of the former Ruler of Devgadh Baria State and that question of fact cannot be inquired into in the petition filed under Article 226 of the Constitution of India. "Khangi" or "khasgi servants were paid salary by the former Ruler of Devgadh Baria State and not from the State Treasury. The petitioners have not been discharged and hence they are not entitled to the pensionary benefits. The petitioners were terminated from service and they were paid three months' notice pay and right for pension is not given to them by the letters dated 14-6-1954, 18-7-1951, 20-5-1961, 20-6-1980 and 24-11-1993, the representations have been rejected. After lapse of 45 years, the petitioners repeatedly raised their claim for pensionary benefits and their claim is barred by delay and latches and hence the petitioners' all the petitions deserve to be dismissed. The petitioners have no fundamental right for entitlement of the pensionary benefits. All the petitioners were private servants of the former Ruler of Devgadh Baria State and their salaries were not paid out of the State Treasury and those five petitioners - petitions who were granted pensionary benefits were not the private employees of the former Ruler of Devgadh Baria State and their salary were paid out of the State Revenue or State Treasury. According to him, salary of the "Khangi" servants were being paid out of special grant made available to the former Ruler of Devgadh Baria State. As such, the "khangi" servants will be deemed to be private servants of the former Ruler of Devgadh Baria State and hence they are not entitled to any pensionary benefits. He also relied on the letter sent by the Under Secretary to the Government of Bombay to the Collector of Panchamahals District, Godhara, wherein it is stated that the Government is unable to accept the position that "Khangi" servants of the Ruler of Baria were paid from State revenue. It is therefore not possible to grant them all the concessions admissible under Rules made in Government Resolution Political and Service Department. They are not entitled to anything more than three months' notice pay under Rule VIII of G.R. dated 30-5-1951 which has been earlier sanctioned in Government letter Political and Services Department on 26-4-1955. It was not necessary now to reconsider the case of the petitioner Shri J.S. Dave and others. In case they have not been granted 3 months' notice pay, necessary steps

should be taken thereof.

10. Learned A.G.P. also relied on the letter dated 19-7-1954 written on behalf of former Ruler of Devgadh Baria State to the Collector, Panchamahals District, Godhara, and copies were sent to the Chief Secretary, to the Government, P & S. Department, Bombay, wherein it is mentioned that remaining 22 servants whose names mentioned are entitled for pension or gratuity as the case may be. He had also drawn attention of the G.R. dated 30-5-1951, Rules and instructions apply to all the State servants irrespective of the departments in which they were served. In para 9 of that Resolution it has been ordered that these Rules and instructions apply to Non-Indian State Forces personnel. They also apply to persons serving in the private departments of the Rulers, only known as "khangi" or "khasgi" servants provided that they were paid from the State revenue. It was made clear that "Khangi" servants of Devgadh Baria State were paid from the State revenue and not from private grant made for the former Ruler of Devgadh Baria State State and "Khangi" servants are entitled to the pension or gratuity as the case may be. He has also produced the letter dated 1-5-1955 of the Collector, Panchamahals District, Godhara, addressed to the Under Secretary to the Government of Bombay stating therein that "Khangi" servants were paid from the General revenue of the State and not from private grant of any contractual grant meant for the Ruler. From the detailed report submitted to the Government of Gujarat dated 9-12-1954, it would be obvious that all "Khangi" servants of former Ruler of Devgadh Baria State were paid from the General revenue of the State Government and "Khangi" servants will be eligible for three months' notice pay in view of three month's of notice of discharge and in addition to pension or gratuity as the case may be, Vide Rule III and IV of GR dated 30-5-1951. From the letter dated 29-4-1955, the Secretary to the Bombay State, sent to the Collector, Panchamahals District, Godhara, it appears that the Collector had reported by his letter that "Khasgi" servant of Devgadh Baria State were paid from the State revenue and the Collector had proposed to grant three months' notice pay as 411 "Khasgi" servants recommended by the former Ruler of Devgadh Baria State. The Secretary to the Government of Bombay found that 411 "Khasgi" servants were paid from privy purse of the Ruler while the remaining revenues were paid from the State Revenues and it cannot be said that the said "khasgi" servants were paid from the State revenue while majority of them were paid by the former Ruler from the privy purse and the clarification was sought from the Collector

by the letter dated 30-11-1959. The Under Secretary to the Government of Bombay sent a memorandum to the Collector, Panchamahals District, Godhara stating therein that the Government has considered the case of Shri Major K.Z. Gohel and found that he was a State Government servant and paid from the State revenues and not a "khangi" servant of the Ruler of Baria and Major Gohel was directed to be paid all the concessions admissible in Government Resolution dated 30-5-1951.

11. I have carefully considered the submissions made by the learned counsel for the parties and perused the relevant material on record.

12. Letter dated 7-5-1955, sent by the District Collector, Panchamahals at Godhara to the under Secretary to the State Government of Bombay shows that in view of this position of "Khasgi" servants will be eligible for notice pay in lieu of three months' notice of discharge and in addition to the pension or gratuity as the case may be vide Rule III and IV GRP-SD 2735/46 dated 30-5-1951. The resolution No. 2735/46 dated 30-5-1951 of the Government of Bombay, Political and Service Department, shows that these Rules and instructions apply to Non-Indian State Forces personnel. They also apply to persons serving in the private departments of the Rules, commonly known as "khangi" servants provided that they were paid from the State revenue. The authority concerned was required to recommend pension or gratuity should assume that it did so after verifying the source of payment. The petitioners have also filed certain pay-bill of payment wherein the petitioners as well as other persons including the persons similarly situated having been granted pension were being paid their salary from the State Treasury. The letter dated 4-11-1961 Annexure-III to the Rejoinder Affidavit shows that Bhikha Amichand Valani was a servant of State Government and not a private paid servant of late H.H.. the Maharaja of Baria and that he was paid from the State Treasury office and not from the private purpose of late H.H. of Baria. Former Ruler - Maharaj of Devgadh Baria State also sent a letter dated 10-4-1968 to the Collector of Godhra, wherein it is stated that Bhikha Amichand Valani was serving and retired from the date of merger. Regarding the question of paying the pension to the "khangi" servants was said to be under consideration of the Government. But nothing has been done and the question of about 411 servants was pending. The Collector, Panchamahals, Godhara vide his letter dated 7-5-1955 after deep investigation goes to show that the "Khangi" servants of the former Ruler of Devgadh Baria State were

paid from general revenues of the former State of Devgadh Baria as other department servants were paid and are eligible for pension or gratuity as the case may be. Another letter dated 17-5-1954 sent by the former Ruler of Devgadh Baria to the Collector, Panchamahals Godhara, shows that certain persons named in the letter are entitled for the pension or gratuity as the case may and "Khangi" servants of former Ruler of Devgadh Baria State were paid their salary from the State revenue and not from their private grant meant for the Ruler. "Khangi" department servants are entitled to the pension or gratuity as the case may be. The letter dated 1-5-1955 sent by the Collector, Panchamahals District, Godhara to the Under-Secretary to the Government of Bombay, Political and Service Department shows that all "Khangi" servants were paid from General revenues of the State and from the private grant of any contractual grant meant for the Ruler. The detailed report has already been sent to the Government on 9-12-1954 which shows that all the "Khangi" servants of the Baria State were paid from the General Revenues of the State as other department servants were paid. In view of this position all the "Khangi" servants will be eligible for notice pay in view of three months notice of discharge and in addition pension of gratuity as the case may be. The letter of the Under Secretary to the Government of Bombay dated 30-11-1959 shows that the Government had considered the various documentary evidence produced by Major Shri K. Z. Gohel and the Collector, Panchamahals District, Godhara fond that Major K.Z. Gohel a State Servant was paid from the State revenues and not a "Khangi" servant of the Ruler of Baria and he was entitled to the terminal benefits given to discharge State servants. As such, he was directed to be paid all the concessions admissible in Government Resolution dated 30-5-1951. D.O. letter sent by the Assistant Secretary to the Government of Bombay to the Collector of Panchamahals District, Godhara dated 29-4-1955, which shows that the Government has approved the proposal of the Collector, Panchamahals District, Godhara for grant of three months' notice pay under Rule VII of the Government Resolution, Political and Service Department dated 30-5-1951 to 411 "Khasgi" servants of former Ruler of Devgadh Baria State in addition to notice pension, they were also paid dearness allowance which they were paid prior to merger. Confusion appeared to have been made to the Under Secretary to the Government of Bombay and it appears that from the letter dated 29-4-1955 sent to the Collector of Panchamahals District, at Godhara sent to the Collector and the Collector had made proposal to grant three months' notice pay to 411 "Khasgi" servants. It appeared to the Under Secretary to

the Government of Bombay that would mean that all 411 "Khasgi" servants were paid from the private purse of the former Ruler while in the case of remaining servants they were paid from the State revenue. The position reported by the Collector of Panchamahals District was found inconsistence and hence the Collector of Panchamahals District, was required to make some clarification and report correct position as to why some of "Khangi" servants were paid from the State revenues while major of them were paid by the former Ruler of Devgadh Baria State from his privy purse.

13. Another letter sent by the Under-Secretary to the the Government of Bombay to the Collector of Panchamahals District dated 25-5-1955 shows that the Government was unable to accept the position that "Khangi" servants of the former Ruler of Baria were paid from the State revenues and it is not possible to grant them all concessions admissible under Rules made in Government Resolution dated 30-5-1951 and hence they are not entitled anything more than three months' notice pay which has already been sanctioned and it was not necessary to consider the case of Shri J.S. Dave and others.

14. In view of the fact, admittedly five persons who were "Khangi" servants of the former Ruler of Devgadh Baria State have been sanctioned by the Government itself after reconsidering the documents produced before it. Therefore, it is not possible for this court to record any finding that the petitioners are entitled to the pensionanry benefits on the basis of the record. If they were being paid out of the State revenue they are entitled to the pensionary benefits and that finding has to be recorded by the concerned department of the Government.

15. In the facts and circumstances of the case, I think it just and proper to direct the Secretary, Finance Department - respondent no. 1 herein to reconsider the entire material of the parties and decide as to entitlement of the petitioners' pensionary benefits after giving reasonable opportunity of hearing to the parties concerned. The parties concerned, would be at liberty to produce all the relevant documents including the relevant resolution, service books, joint pay bill of several "Khangi" and other servants of former Ruler of Devgadh Baria State, certificate issued by the former Maharaja of Devgadh Baria State and letters written by the former Ruler of Devgadh Baria State to the Collector of Panchamahals Districts, Godhara and any other material

which any of the parties like to produce before the authority concerned. The authority concerned may require necessary information from the Collector, Panchamahals District, Godhara, in this respect, after inquiring into the matter and considering the entire material on record, shall decide the same in accordance with law by a speaking order, as expeditiously as possible preferably within a period of four months from the date of presentation of certified copy of this order.

15. In case, any adverse decision is taken by the authority concerned against the petitioner/petitioners, the authority concerned shall send a copy of the order to the petitioner/s by Registered Post A.D. and the petitioners would be at liberty to file a fresh petition.

16. With the above observations and directions, all these petitions stand disposed of. Rule is discharged, with no order as to costs, in all the petitions.

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